

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

26927

**FILE:** B-212162

**DATE:** November 30, 1983

**MATTER OF:** B.K. Instrument, Inc.

**DIGEST:**

1. Where IFB identifies previously approved source controlled components and requires bidder to certify that it will furnish only those components, bidder's failure to certify is a material deviation and requires rejection of bid as nonresponsive.
2. A bid that is properly declared nonresponsive due to failure to certify that it will provide only parts from vendors listed on source control drawings may not be corrected through mistake-in-bid procedures.

B.K. Instrument, Inc. protests the rejection of its bid as nonresponsive to the source control certification requirement of invitation for bids (IFB) No. DAAA09-83-B-0149 issued by the U.S. Army Armament, Munitions, and Chemical Command, Rock Island, Illinois, to procure servo-mechanisms. B.K. argues that by submitting a bid it is obligated to provide items from the vendors listed on the source control drawings and that its failure to complete the certification is a minor informality which can be waived. Alternatively, it argues that the failure to complete the certification was merely a clerical error of omission which may be corrected. We deny the protest.

The IFB specifications included eight source control drawings, each drawing bearing the following legend:

"ONLY THE ITEM DESCRIBED ON THIS DRAWING WHEN PROCURED FROM THE VENDOR(S) LISTED HEREON IS APPROVED BY FRANKFORD ARSENAL, PA., FOR USE IN THE APPLICATION(S) SPECIFIED HEREON. A SUBSTITUTE ITEM SHALL NOT BE USED WITHOUT PRIOR APPROVAL BY FRANKFORD ARSENAL."

027323

In addition, the solicitation contained a separate certification clause for source controlled items which provided:

**K.7 CERTIFICATION OF SOURCE CONTROLLED ITEM  
OR COMPONENTS (K.30)**

This solicitation contains a requirement for bidders/offerors to supply an item or component(s) that is (are) identified as source controlled. The bidder/offeror represents and certifies as part of his bid/offer that: (check box)

☐ The item/component(s) being offered will be obtained from only the approved source(s) identified on the source control drawing(s).

**CAUTION: If this is a formally advertised procurement, failure to complete this certification will render the bid nonresponsive."**

The contracting officer discovered that B.K. had failed to check the box in clause K.7, quoted above, and therefore determined that B.K.'s bid was nonresponsive. The Army explains that the certification is needed to alert bidders to the fact that only certain approved items will fulfill the Government's requirements and to enable the Government to ascertain that the sources of the items which the bidder is offering have been approved at the time of bid opening. According to the Army, under solicitations including only the drawing legend and not the certification clause, contractors manufacture and deliver products which contain items which have not been approved, resulting in rejection of the products and lengthy delays in the procurement. The Army states that the certification clause was designed to avoid this problem.

B.K. argues that because the solicitation requires bidders to comply with the solicitation's drawings, and all the source controlled items are set forth in the legend of those drawings, by submitting its bid, it bound itself to provide items from the vendors listed on the source control drawings. It states that its failure to check the certification clause does not vary that obligation that the certification requirement in clause K.7 is redundant and therefore its failure to certify is a minor informality which can be waived under Defense Acquisition Regulation (DAR) § 2-405 or is a clerical mistake correctable under DAR § 2-406.

The result in this case is controlled by our decision in MVI Precision Machining, Ltd., B-210730, September 27, 1983, 83-2 CPD 382, which also involved the rejection of a bid as nonresponsive for failure to check the box in a clause identical to K.7 and in which case much the same arguments were made as are here presented by B.K. In MVI, we stated that the bidder's failure to complete the certification clause affects its obligation to perform in accordance with the IFB because without such a certification the legend on the source control drawings does not limit the bidder to sources approved prior to bid opening. The legend on the source control drawings simply states that substitute items shall not be used without the agency's approval; thus, bidders would be able to propose the use of substitute items after bid opening. Under the certification, however, the bidder is obligated to furnish only items from approved sources "identified on the source control drawing(s)," that is, approved sources listed on the drawings at the time bids are opened. Consequently, because the certification clause imposes a different obligation than that set forth on the individual source control drawings, B.K.'s bid lacking the certification cannot be considered to be an unequivocal offer to deliver exactly what is called for in the solicitation.

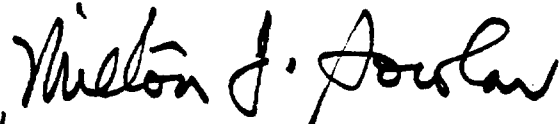
The deficiency in B.K.'s bid is material and not subject to waiver as a minor informality. A material deviation is one which affects the price, quality, or quantity of goods or services offered. RAD Oil Company, B-209047, October 20, 1982, 82-2 CPD 352. The certification clause is to ensure that the items provided will have been tested and approved as meeting the Government's needs and thus this requirement clearly will affect the quality of the product and in all likelihood the price also.

B.K. also argues that it completed the certification in its draft copy of the bid and therefore its failure to do so in the bid which it submitted was clearly a clerical error of omission which should be corrected under DAR § 2-406. It further claims that this error was apparent on the face of its bid because clause K.7 provides that failure to complete certification will render the bid nonresponsive and it is clear that no bidder would go to the trouble of submitting a bid and then intentionally omit checking a box which would make the bidder ineligible for contract award.

4 DAR § 2.406, however, is inapplicable to this situation. We have consistently held that the determination of

whether a bid is responsive to the requirements of a solicitation is to be made on the basis of the bid as submitted and that it is not proper to consider the reasons for the nonresponsiveness, whether due to mistake or otherwise. E.I du Pont de Nemours & Company, Inc., B-208095, September 20, 1982, 82-2 CPD 245. A nonresponsive bid may not be made responsive by explanation or reference to extraneous aids after bid opening. International Waste Industries, B-210500.2, June 13, 1983, 83-1 CPD 652. The fact that a mistake contributed to the nonresponsiveness of the protester's bid affords no basis for relief because mistake-in-bid procedures are not available to cure a nonresponsive bid. A&H Precision Products, Inc., B-206932, April 16, 1982, 82-1 CPD 354. We have found that B.K.'s failure to certify that it would provide parts from the vendors listed on the source control drawings rendered its bid nonresponsive and consequently the Army through the use of the mistake-in-bid procedures could not allow B.K. to correct its failure to certify.

The protest is denied.

*for*   
Comptroller General  
of the United States